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VIA EMAIL AND FIRST CLASS MAIL

Federal Election Commission
Office of Complaints Examination
and Legal Administration
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OFFICE OF
GENERAL COUNSEL
2018 JUL 17 AM 9:55

Re: **MUR 7404**

To the Office of Complaints Examination and Legal Administration:

I write in response to the complaint recently filed by Mr. Pierre Quincy Pullins with the Federal Election Commission, MUR 7404 (the "Complaint" or "Compl."), asserted against the *Indianapolis Star* ("Respondent").

The Complaint is frivolous and should be expeditiously dismissed. The news coverage by the *Indianapolis Star* of Mr. Pullins' unsuccessful congressional campaign is encompassed by the so-called "press exception" and therefore cannot constitute an "expenditure" or a "contribution" within the meaning of the Federal Election Campaign Act (the "Act") and/or related Commission regulations. See 52 U.S.C.S. § 30101(9)(B)(i); 11 CFR 100.73; 11 CFR 100.132; see also, e.g., Advisory Opinions 1996-16, 2016-01, 2005-16, 2004-07, 2000-13 & Commission Factual and Legal Analysis re MUR 7238 (rejecting complaint against news organization due to alleged failure to give equal coverage to federal candidates) (July 2017).

The Complaint

The Complaint filed by Mr. Pullins identifies a variety of individuals and entities whom he holds responsible for his unsuccessful campaign for a seat in the U.S. House of Representatives. Insofar as the Complaint specifically references the *Indianapolis Star*, Mr. Pullins contends the *Star*'s news coverage was more favorable to a rival candidate than to himself. The Complaint does not identify any news report it alleges to be a violation of the Act, however, nor does he offer any actual evidence of a purported violation. Instead, Mr. Pullins generally claims the *Star* failed to publish certain information that Mr. Pullins believed advantageous to his candidacy. See Compl. at p. 1 ("The Indianapolis Star has a history of treating Pullins differently from other candidates to the benefit of [the incumbent] Carson."); see id. at p. 2 ("It appears that the Indianapolis Star, the Indianapolis Recorder and WTLC radio coordinated their 'news coverage' with the Carson campaign on a matter of public concern (election) to shield him from responding to questions that he didn't want to respond to ... That censorship by these news organizations was a great boon to Carson and potentially saved him from spending money to counter any

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negative news.”) At bottom, and although Pullins offers no evidence whatsoever, the thrust of the Complaint is that the *Indianapolis Star*’s news coverage somehow constituted an expenditure or contribution in favor of a candidate in violation of the Act. See Compl. at p. 1 (“Pierre Quincy Pullins believes and alleges the aforementioned individual and entities and their employees engaged in a conspiracy to suppress and injure Pullins’ congressional campaign and message.”).¹

Controlling Legal Precedent

Respondent is aware of no legal support for the proposition that the Commission can regulate, nor aspires to regulate, *bona fide* news media entities who are accused of failing to give favorable coverage to candidates for political office. This is true regardless of whether the Complaint contends that the news media coverage is allegedly biased or otherwise omits information the candidate desires to see published. Mr. Pullins’ contention here would turn the First Amendment on its head. See, e.g., *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (“The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public official – whether fair or unfair – constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.”). There are numerous other cases which stand for this fundamental constitutional principle.²

Mr. Pullins’ Complaint should also be dismissed because he provides absolutely no factual support for his allegations against the *Indianapolis Star*. And, regardless, the Act and Commission regulations establish that the Complaint has no merit whatsoever. Specifically, the terms “contribution” and “expenditure” include any gift of money or “anything of value” for the purpose of influencing a Federal election. 52 U.S.C.S. § 30101 (8)(A) and (9)(A); 11 CFR 100.52(a) and 100.111(a). However, there is a long-standing exception for “any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication . . . unless the facility is owned or controlled by any political party, political committee, or candidate[.]” 11 CFR 100.73, 100.132; see also 52 U.S.C.S. § 30101(9)(B)(i). This is the “press exception” as it is commonly known.

¹ It is not clear when Mr. Pullins claims this purported violation arose, as the Complaint references various dates. Suffice to say, Mr. Pullins has run several times for Congress without success, most recently receiving about 200 votes of more than 40,000 cast in the Democratic primary for Indiana’s Seventh Congressional District in May 2018. See <https://www.politico.com/election-results/2018/indiana/>

² As the Commission has observed, the House report on the 1974 amendments to the Act emphasized the statute was not intended to “limit or burden in any way the first amendment freedoms of the press” and would assure “the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns.” H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4 (1974).

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As aptly summarized in Advisory Opinion 2005-16 at page 4:

The Commission has applied a two-step analysis to determine whether the press exception applies. First, the Commission asks whether the entity engaging in the activity is a press entity as described by the Act and Commission regulations. *See, e.g.*, Advisory Opinions 2004-07, 2003-34, 2000-13, 1998-17, 1996-48, 1996-41, and 1996-16. Second, in determining the scope of the exception, the Commission considers: (1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and (2) whether the press entity is acting as a press entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its "legitimate press function"). *See Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); *FEC v. Phillips Publishing*, 517 F. Supp. 1308, 1312-1313 (D.D.C. 1981); Advisory Opinions 2004-07, 2000-13, 1996-48, and 1982-44.

Two considerations in applying this analysis include whether the entity's materials are available to the general public and are comparable in form to those ordinarily issued by the entity. *See Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238, 251 (1986); Advisory Opinion 2000-13 (concluding that a website covered by the press exception was "viewable by the general public and akin to a periodical or news program distributed to the general public.").

Furthermore, and although Respondent disputes that Mr. Pullins' candidacy was disfavored in the manner he would claim, the Commission has repeatedly observed that "an entity otherwise eligible for the press exception would not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial, even if the news story, commentary, or editorial expressly advocates the election or defeat of a clearly identified candidate for Federal office." Advisory Opinion 2005-16, at p. 6 (citing *First General Counsel's Report*, MUR 5440).

Conclusion

Applying the Commission's analytical framework, the Respondent here obviously qualifies as a press entity. The *Indianapolis Star's* website and its print publication are available to the general public and clearly fall within the category of a newspaper, its online equivalent, and/or a periodical publication as described in the Act and Commission regulations. Even a cursory examination of www.indystar.com establishes that its primary function is to provide news and information. The Complaint itself also concedes, as it must, that the *Star* is a news organization. *See also Indiana Newspapers Inc. v. Junior Achievement of Central Indiana, Inc.*, 963 N.E.2d

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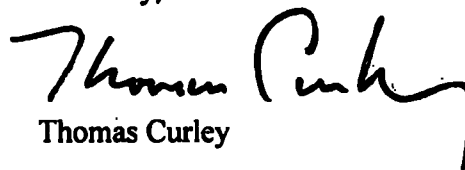
534, 541-42 (Ind. Ct. App. 2012) (observing that "The Indianapolis Star [is] a daily newspaper of general circulation published in Indianapolis, Indiana.").

Similarly, the *Indianapolis Star's* ownership is a matter of public record with the Securities and Exchange Commission – its ultimate parent is the publicly traded company Gannett Co., Inc. – and thus the *Star* is not owned or controlled by any political party, political committee, or candidate. See generally <http://investors.gannett.com/>; see also <http://static.indystar.com/en/aboutus/>; https://www.washingtonpost.com/archive/business/2000/06/29/gannett-buys-phoenix-indiana-newspapers-for-26-billion/6b29a0a9-2b50-472e-b40f-4e15f2b4f482/?utm_term=.8c8eea0ab86a (noting Gannett's purchase of *Star* newspaper).

The Commission has repeatedly held that organizations engaging in journalistic activities like those undertaken by Respondent here shelter within the press exemption. See, e.g., Advisory Opinion 2004-07, at p. 6 ("The Commission considers posting news stories, commentaries, and editorials on a press entity's website to be within the entity's legitimate press functions. Accordingly, posting this information on MTV's website would not violate 2 U.S.C. 441b."); Advisory Opinion 2016-01, at p. 3 ("Ethiq's website and app will provide news and information about candidates and businesses to users, through both curated and original news content. Ethiq will employ journalists to produce original content and will retain editorial control of that content, similar to the way in which traditional magazine and newspaper editors generate and manage the content of their publications, and also similar to the way that the requestors in Advisory Opinion 2000-13 (iNEXTV) and Advisory Opinion 2005-16 (Fired Up) determined what content would appear on their websites. The Commission therefore concludes that Ethiq is a press entity under the first step of the media exemption test."). See also Advisory Opinion 2005-16; Statement of Reasons in MURs 5540, 5545, 5562 & 5570 (CBS Broadcasting) (July 12, 2005); Factual and Legal Analysis re MUR 5928 (Kos Media) (September 4, 2007); Factual and Legal Analysis re MUR 7238 (USA Today) (July 2017).

Accordingly, Respondent respectfully requests that the Complaint be dismissed expeditiously because it has no merit.

Sincerely,


Thomas Curley